

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON AGRICULTURE, LIVESTOCK AND IRRIGATION

Call to Order: By **CHAIRMAN REINY JABS**, on January 15, 1999 at 3:00 P.M., in Room 413/415 Capitol.

ROLL CALL

Members Present:

Sen. Reiny Jabs, Chairman (R)
Sen. Walter McNutt, Vice Chairman (R)
Sen. Tom A. Beck (R)
Sen. Gerry Devlin (R)
Sen. Pete Ekegren (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Greg Jergeson (D)
Sen. Ken Mesaros (R)
Sen. Linda Nelson (D)

Members Excused: Sen. Jon Tester (D)

Members Absent: None.

Staff Present: Carol Masolo, Committee Secretary
Doug Sternberg, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 171, 1/11/99, SB 177,
1/11/99

HEARING ON SB 177

Sponsor: SENATOR SPOOK STANG, SD 36, ST. REGIS

Proponents: None

Opponents: **John Bloomquist, Montana Stock Growers**
 Jim Peterson, Montana Stock Growers
 Mona Jameson, Gallatin County
 Phil Olson, Gallatin County Commissioners

Opening Statement by Sponsor:

SENATOR SPOOK STANG, SD 36, Western Montana SB 177 revises the herd district laws allowing county commissions to create a herd district of 1 square mile or more outside of an incorporated city. The two changes over the current bill are the requirements that 25% or more of the land in the district has to be under cultivation and have a minimum district of 12 sq. miles. This bill says that 55% of the land in the district, regardless whether it's under cultivation, can be used to create a herd district and it can be 1 square mile or less.

This bill rises out of an area in the western part of my district that is rapidly growing. The people in the area seem to be having a tough time getting a herd district organized because most of the land is timber land. There's very little land under cultivation. They've had some real problems with their neighbor's cattle, even though they're fenced out. The county has taken out the cattle guards in the road. There are a couple businesses and if their customers have to open and close a gate each time they come in and out of their business, it creates some problems for these people.

I realize this probably isn't a popular bill in this committee. But I felt it was my duty as a legislator who represents these people in a rapidly growing area to present this idea to this committee. Hopefully this committee can improve upon this idea so it's acceptable to those people who will undoubtedly testify against it. I just ask those opponents to be gentle with me when they gang up on me.

John Bloomquist, Montana Stock Growers, The effect of the bill is to dramatically shrink the threshold for a creation of a herd district. If this were to be passed I think you definitely would see more and more herd districts potentially created. As subdivisions expand and subdivision development continues you would probably have more and more smaller herd districts.

The real concern is not on the fencing requirements associated with herd districts. There's a liability issue that goes along with it in terms of livestock getting out on the county road and getting involved in an accident, in terms of getting violations of the legal fence provisions which creates a negligence per se, should there be an accident on the county road.

My understanding of one of **SENATOR STANG's** problems in his area was maybe the land description that goes along with herd districts. I haven't taken a look at that to see whether it's an avenue or not. We oppose the bill.

Jim Peterson, Montana Stock Growers, asked the officers and directors of the Montana Stock Growers to please stand rather than run through the line. Mr. Bloomquist explained exactly our position. For the committee, there are several people here representing the Association.

Mona Jameson, Attorney and Lobbyist, Gallatin County A New York girl is standing up and supporting open range and traditional fencing requirements. Gallatin County is opposed to this bill for the reasons that Mr. Bloomquist summarized. We have ranchers that have been ranching on our land for many, many years. We know prime land is getting subdivided and homes are being put on that land. This one square mile requirement basically says to the rancher that's been there and is now within the herd district and no longer open range, you have to fence your cattle in. We don't believe this is fair. We believe that 1 square mile is just so drastically small and different than the existing 12 square miles that are referenced in 301 that it's too large a shift to the rancher. We ask you to please reject this bill.

Phil Olson, Gallatin County Commissioner, speaking for the full Commission of Gallatin County. We agree Mr. Bloomquist's presentation. I understand there are needs. At one time we considered a bill that would contain reduction in size. There are places where private land is nestled in with public land and it makes it almost impossible to form a herd district. However, the way this bill is worded we cannot support it and we hope you would deny it. I would suggest that hopefully **SENATOR STANG** might redo the bill somehow in a fashion we could support because there are people that do have a need.

Questions from the Committee and Responses:

SENATOR MESAROS Did you go to the Dept. of Livestock and get some idea of how many areas in the state this might affect, the amount of districts that would be developed.

SENATOR STANG I would expect that with the number of people moving into the state, and the fact most these people want their 10 and 20 acre ranches, there's probably quite a substantial area and this would happen all over the state. No, I didn't ask the Dept. of Livestock and I doubt very much they even have that information.

SENATOR HALLIGAN Given the suggestion of the commissioner of Gallatin County, has your organization looked at the issues related to size requirements of the herd districts to see if there are exceptions that you can deal with at some point? Maybe not with this bill but some piece of legislation that might address what the public lands do.

John Bloomquist I haven't looked or talked to Gallatin County specifically about the size issues or land description issues, but I'd be happy to try to do so and see what their thoughts and ideas are.

SENATOR DEVLIN You mention people in your district having problems and they have a small place in an open area, open range thing.

SENATOR STANG In western Montana, we don't have the large expanses like you do in eastern Montana. Most of the people tend to congregate in the valleys. There are some areas where the former owners of that land have subdivided or sold off. There are a number of people that live in this kind of small valley.

SENATOR DEVLIN Have these people also tried to fence?

SENATOR STANG Yes, they have. That's the problem because they have fenced out. At one time the county had cattle guards. They've asked the county to put cattle guards back in but they haven't. Three or four of these people are in business. The fencing requirements would require them to put in a cattle guard or put a gate on there. One is a person who makes motorcycle trailers. It's dangerous for motorcycles to come across a cattle guard. His customers would have to open and close a gate to go in and out. He sees that as not conducive to doing business in that kind of area.

SENATOR DEVLIN I mean someone who isn't a business now. What kind of a fence are they putting up that they can't fence cows out.

SENATOR STANG They are putting up, in my estimation, a barbed wire fence. That's an area which is also frequented by elk and as many of you people know, elk don't care about fences. Cows might, but elk will come through in the middle of the night and knock fences down, so the next day the cows are in the yard. It's becoming a problem.

SENATOR DEVLIN I guess if you want to live with wild life, you have to accept cows too.

SENATOR BECK I have that same problem on my ranch about the elk going through my fence, hunters traveling them through and then the neighbors' cattle getting mixed with my cattle. It's just a point of doing business in this state and I'm having a hard time with this bill. Maybe there's some cooperation that could be done between the parties.

SENATOR STANG I think the people that moved up there probably didn't know that cows just like to go where cows like to go. They built their fences and thought there would be no problem but over the years it's become a problem. The relationship between them and the ranchers that own the cattle has become strained. As you know, when that happens you become not so good neighbors.

The reason I brought this bill forward is not that I'm tied to and in love with this bill. I think if this committee, with the help of the stock growers, could come up with a solution that everybody can live with, maybe the stock growers and their neighbors would be able to get along. If they can't, so be it, but I trust this committee to work on this bill and hopefully they'll come up with a solution.

I had a constituent named Mr. Finley whose neighbors wanted to form a herd district for probably this same reason. They couldn't do it. One person was in the tree farming business. Mr. Finley's cows kept getting into their trees. They tried to fence them out but his cows were pretty wild. They took Mr. Finley to court. He spent practically his life savings taking that issue to the Supreme Court and won. Although a lot of people up there didn't agree with the way Mr. Finley let his cows run, they had to give Mr. Finley credit for going all the way. I've always respected the gentleman for doing that. As these conflicts become more and more common, I think it behooves the legislature to try to find a way.

SENATOR BECK Maybe we ought to specify in a bill a certain type of fence be put around their property to keep the cattle out. I'm saying this much, good fences make good neighbors. It's not only among somebody who doesn't own cattle, it's also among people that own cattle on both sides of the fence.

Closing Statement by Sponsor:

SENATOR STANG The Deer Lodge valley that you live in, **SENATOR BECK**, has long been a ranching community and ranching area. The areas these people live in are little pockets. It's not as big a valley as yours. That would be good advice for them to take but it's a whole different situation there. If this committee can fix this bill so that the stock growers can live with it, fine.

If they can't, I'll go back and tell the people in my district that they should build better fences and maybe they'll be better neighbors.

{Tape : 1; Side : A; Approx. Time: 3:32}

HEARING ON SB 171

Sponsor: SENATOR KEN MESAROS, SD 25, CASCADE

Proponents: Keith Bayles, Montana Stock Growers
Ken Mackey, Montana Farmers Union
David Kasten, Self
Page Drigman, Montana Landowners Association
Bob Stevens, Montana Grain Growers, Montana Farm
Bureau
Bill Garrison, Montana Stock Growers Assn, Self
Jim Rath, Self
Tom Hougen, Rancher, Melstone
Mike Meuli, Self
Tony Carroceia, Self
John Swanz, Self, Montana Stock Growers Assn.
Candace Payne, Women In Farm Economics
John Popp, Bozeman Rancher
Mike Murphy, Self

Opponents: Van Jamison, Montana Wildlife Federation
Vince Fisher, Skyline Sports, Butte
Jim McDermid, Self

Jack Puckett, Big Sky Upland Bird Assn.
Tony Schoonen, State Lands Coalition
Bob Bugni, Prickly Pear Sportsmen
Bill Holdorf, PLAAI
Bob Lucas, Big Sky Upland Bird Assn.
Lawrence Gickerson, Self
L. F. Thomas, Anaconda Sportsmen
Charlie McCarthy, Self
Bill Orsello
Stan Frasier, Montana Wildlife Federation
David VanTighem, Landowner

Opening Statement by Sponsor:

SENATOR KEN MESAROS, SD 25, I bring before you for your consideration SB 171. I first of all want to follow up on what SENATOR STANG said about trying to resolve conflict and that has

to do with access of private land. You have before you today probably the most simple bill you'll see this session. It's one sentence and simply requires hunters to ask permission before they hunt on private land, in your back land. If we keep that in mind, that it's just private land, I'd appreciate it.

Right now we have dual standards. We have for years had the statute that we were addressing for big game hunting that requires permission to hunt on private land. All other hunting is open by failure to post. It creates an inconsistency in the law as far as hunting activity on private land.

I would certainly express my intent in forwarding this piece of legislation that we could increase communication, coordination and courtesy between private landowners and the hunting community. Communication, I feel, is key in maintaining and enhancing the landowner/sportsman relationship. Anytime you have a one on one conversation as far as permission, where to go, it certainly enhances that.

Coordination. Again, when we have permission required it allows the landowner to coordinate with the hunter exactly where to go and how to access certain areas. Certainly, courtesy. Most of the responsible sportsmen recognize in a good working relationship that it is only responsible to ask first. You see bumper stickers all over reading Ask First and Preserve Private Property Rights. I'll use my area for an example. We're in Block Management program for big game hunting but that still requires permission. Anytime you have a one on one relationship, you have an opportunity to hand the sportsman from the hunting community a map. Many times it gives the landowner an opportunity to color code these maps so there's no question as to where to go. It avoids undue conflict.

Who's affected? The big game hunters have to have permission right now. Responsible other hunters who recognize that and enhance the cooperation ask now. In my estimation, very few people will be impacted. The permission that is required in the current statute is very, very flexible. Permission can be given in person, over the phone, on a daily basis, weekly basis, or season basis. It's very flexible with the landowner.

Will this close any access? No. It is certainly the same amount of land and it's just a matter of requiring that we create some consistency in hunting activity on private land to ask first to access that private land for hunting.

The reason I forward this is there has historically been conflict in many areas across the state under the current system. The current law states that (cannot understand) shall remain on land

as extended either by the explicit permission by the landowner or other authorized person, or by failure of the landowner or other authorized person to post notice denying entry on private land. The posting requirements go into notice must be placed on a post, structure or natural object by marking it with written or with not less than 50 square inches of fluorescent orange paint, except when a metal post is used, the entire post must be painted.

The problem is, notice must be placed at each outer gate, the normal access to the property including both side both sides of a water body crossing the property whenever the water body intersects the boundary line. This might seem quite simple on the surface, but with the expanded Block Management, it certainly requiring all boundary fence wherever it is on private property to be posted at every normal access point. This therefore identifies every gate or any water body flowing, you'd have to have a posting requirement at that. The problems with that and certainly inherent which you use, anyone familiar with orange paint on a wood post, it lasts for a very short period of time and then all of a sudden that orange is a shade of yellow. Signs certainly fall off or can be rubbed off or disappear.

It creates a situation where on one statute today you can, with the big game hunting requirement, go in and hunt antelope with a high powered rifle and require permission. Yet tomorrow if by chance there's a sign rubbed off, that same person can go in the same property without notification of the property owner with that same high powered rifle that has a risk factor and go on and will. This proposed modification would certainly alleviate that.

The most frustrating part, I believe, for both sportsmen and landowners, is the conflict that exists in the field when indeed private property owners feel they've taken all different steps to have property posted, and yet by some inadvertent act, signs come off or something and there's someone in an area that the property owner may have employees or livestock or something that could create a hazard with hunting activities.

This certainly is not intended to reduce the opportunity of sportsmen in Montana. I love to hunt and recreate. This is certainly intended to enhance the communication and coordination and certainly ultimately avoid some conflict that we have. I reserve the right to close.

Proponents:

Keith Bayles, Montana Stock Growers Assoc. In support of this bill. The main and most important thing it will do is remove confusion among landowners and sportsmen. Today you see all the

bumper stickers that **SENATOR MESAROS** indicated, "Ask first to hunt on private property". Many of the landowners out there think well, that means for any kind of hunting, they need to ask. That is not the case today so it has lead to confusion. I think actually it will make landowner and sportsmen relationships better if that confusion is taken away.

Another problem today I see and **SENATOR MESAROS** alluded to it, on the posting deal on trespass with orange paint. It says gates and normal places of access. Today if you have some hunters going out across the field and they come to a fence and there is not a gate, they may very well be going onto somebody else's property that might be posted down the line and the normal point of access, but is not posted there. You have a situation of conflict where neither party is necessarily at fault. The landowner maybe has posted his land properly and yet the sportsman, if he does not see orange paint there feels that it is open. You have an open source of conflict.

By making all hunting the same, by making it all equal, that takes away part of the conflict and it puts everyone on an equal playing field. In the process, I think that the hunters, by going to the landowners and asking to hunt and the landowner saying sure, here is my property and here is where you can hunt, that establishes a better rapport and a better dialog between those people. I think it will avoid conflict because they say my property runs to here and by the way, you will have to talk to my neighbor if you want to go hunt there. That situation is not there today.

It is very important that this committee and the legislature pass the legislation to take away the confusion and in the process make the landowner/sportsman relationship better.

Ken Mackey, President, Montana Farmers Union, On many issues our organization isn't very unanimous, but this is one we're virtually unanimous on. It would simplify the law and the rules and take the confusion out. The thing that strikes me kind of odd is that for years and years we always let anyone hunt on our place who came and asked. It got to the point we had to put a sign up because people were hunting because we didn't have a sign. Now we do that. I guess what I would like to see is why do we have to spend all these human hours trying to justify what to me is just the right thing to do. We're very much in favor of this; I hope it passes.

David Kasten, Private landowner & Rancher, I do not have any paint on my fences anymore. This is a good deal. It would put some consistency in there and do a lot to help relations between

hunters, fishermen, sportsmen and landowners. I really appreciate **SENATOR MESAROS** for putting this bill in. I think it's been put in before and failed, for what reason I do not know. It definitely would be an improvement. The Circle Rifle Club asked me to put on record that they are in favor. There are seventy members of the Circle Rifle Club and they would definitely support this measure.

Page Drigman, Montana Landowners Alliance, This is a group of ranchers dealing primarily with access issues. On behalf of that organization we encourage you to support this legislation. We think it is a very simple act of common courtesy that can go a long way toward improving landowner/sportsman relations.

Bob Stevens, Montana Grain Growers, Montana Farm Bureau, This is probably one of the best bills I've ever seen. As **SENATOR MESAROS** says, there's not much to it, it just says ask permission. This really affects us in my area. Most of our hunting is birds and there are no restrictions on birds. You don't have to ask. We have quite a little land out there and we let anybody hunt. Never turned a person away except don't hunt by the buildings and don't hunt in my shelter belt. Anybody comes there I tell them stay away from any farmers and ranchers buildings. That's what gets them mad. You have to understand why they want to go there. Where do the pheasants go after they've been shot at. They get into your shelter belt and drive into your yard. A hundred pheasants in my yard, can I go out in your trees and shoot those pheasants. No, you cannot. I've even gone out and chased the pheasants out so they can shoot at them. This was the biggest problem we had, after awhile they congregate around the buildings and they will go out there if you don't stop them. If they ask permission, say yes, You can hunt any place you want, but don't hunt around people's buildings. I think it's a good bill, I think you should pass it.

{Tape : 1; Side : B; Approx. Time Counter : 3:40}

Bill Garrison, Vice President, Montana Stock Growers Assoc., I ranch down in southwestern Montana. I just feel with the increased hunting pressure on all types of hunting, we need to go with permission for all types of hunting. People are using navigable streams for access to private lands. That really gives us a need to have permission so that landowners know that the people are there and what's going on. I think it would make for a better relationship between sportsmen and landowners in the future if permission were required.

Jim Raths, Rancher, I rise in support of this bill. I think it's a good bill and basic statement of landowners rights and it's time to have it.

Tom Hougen, Rancher, Also stands in support of this bill. I see this bill as ending conflicts if at least ranchers know a hunter in the field with a rifle has asked permission. I think there is some confusion in the state with this big game hunters having to ask permission and bird hunters do not. I would like this be standardized so there's no question. Maybe even people who didn't plan on letting anyone hunt will when somebody comes to the door to ask.

Mike Meuli, Rancher from Dayton, the current law requiring big game hunters to seek permission before hunting has worked very well. We've used written permission slips for big game hunters for several years and have been enrolled in the Block Management Program for the past two years. This situation with big game hunters allows us to meet each hunter, to let them know where boundaries fences are, advise them where cattle may be, anything else that might be important to them having a good hunt and being welcomed back. It also allows us to control hunting on days we might be moving livestock through hunted areas. Our policy has been one where anyone who asks permission respectfully gets permission, we've never posted our property. The only time we ever deny anyone is when for whatever reason it doesn't meet with where our cattle are, our stewardship responsibility for the land. The exception to the rule in terms of have respectful hunters has been a few bird hunters, because of the implication of the law now that they can go wherever they want. The attitude has been, when we asked them to just come and ask us, well, we really don't have to. That hasn't set well with us. I feel that when the State of Montana sets up a hunting season and allows for the use of firearms to hunt with but does not require landowner permission for hunting, two things are happening. Landowners, their families and other users of their property are being put at risk, because we don't know who might be out there with a firearm. There's also burden being put on the landowner when it hasn't been necessary for other reasons to post their property, to go out spend time posting their property, checking to make sure signs are up and repainting their posts. I respect other's property rights. I don't expect to use someone else's car or camp on their lawn or any other property without asking and I would just ask the same of others.

Tony Carroceia, Landowner in Sweetgrass County, As a member of the Young Ag Couples Conference, I haven't had a chance to talk to all 40 couples at the conference, but I have talked to a number of them and every single person I've talked to is in

agreement that this bill needs to be passed. I enjoy hunting and recreating and all sorts of things, but I would never think of hunting on one of my neighbors' lands without asking permission first, regardless of what kind of hunting I'm doing. I think it's simply a matter of common courtesy and common sense and I urge you to pass it.

John Swanz, Judith Gap Rancher, Rise in favor of this bill. It is common courtesy to ask anyone to go hunting on private land. I hunt, own a ranch, but also would not hunt on anyone's land without asking permission first. Until the last session, I didn't know you could hunt anyplace without permission. The only guys who have ever gotten kicked off our ranch for hunting are the guys who didn't ask. We never refused anyone who stopped to ask.

Candace Payne, WIFE, Our policy certainly supports the concept of private property rights. Where landowners bear the burden of owning that property, certainly they should also enjoy the benefits, including knowing who is on that property and to control where they're at on their property.

John Popp, Bozeman, Rancher, I don't believe any of us have ever owned orange paint and we don't buy signs. We do like to have people ask to hunt if they want to come in. Never turn them down if they ask. We have birds, a lot of deer. Hunters are in there bow hunting and it's great. We enjoy them being there and just ask that they ask. To make it into a law just seems to me a shame you have to pass a law to do it.

Mike Murphy, This bill does reflect on what I consider to be a very important aspect of Montana. That is our traditional Montana hunting, fishing, values and the relationship the landowner and the sportsman. I think this bill will foster communication and hopefully open new lands to hunting and fishing opportunities from individuals that might not be there at this point in time.

{Tape : 1; Side : B; Approx. Time: 3.51}

Opponents:

Van Jameson, Montana Wildlife Federation, Opposes SB 171, yet while opposing the bill, wants for all the committee members to understand we respect private property and very much appreciate the many landowners across the state who have graciously hosted all of our members over the many, many years. Wildlife Federation believes strongly that all recreationists, sportsmen and others should ask permission from landowners before they

enter onto their private property. This was the bedrock principle agreed upon by the Consensus Council that looked at this issue between last session and this one before it was disbanded.

The reason Wildlife Federation opposes this bill is very similar to the gentleman who commented it was too bad we need such a bill. We're not convinced we need such a bill to require, as opposed to encourage, the bird hunters and non big game hunters who enter unposted private land to ask permission. We think they should do that.

The states and provinces that surround us haven't seen the need to require permission to enter unposted lands. We can't see why Montana sportsmen or Montana landowners are so different from those in surrounding states to justify our being as restrictive as this bill would require. We share unique western tradition and culture with the states and provinces that surround and that's exactly why their approach to trespass is similar to our. I'd like to handout some information that was developed as the Consensus Council was looking at this issue. **EXHIBIT (ags11a01)**

You'll note that even our current restrictions are more restrictive than in any of these other western states. The roots of Montana's and these other states' trespass laws arose from a same set of conditions and circumstances. The west has always had mixed land ownership patterns with private and public lands intermingled with one another. The west is vast and it's very expensive to fence and otherwise define the ownership boundaries. We all recognize that's the case. We all recognize the conditions that generated our western ways of doing things haven't entirely disappeared yet. I think all of us are very thankful for that.

There remain innumerable practical problems in the field that make complying with this bill and existing law, quite frankly, difficult. It's still very difficult to know exactly where property lines are located in the field. Fences don't always follow property lines and in many instances, fences may not be present at all. It's difficult to find out who owns or leases a specific property so that permission can be sought. Few counties have ownership maps available and the proper domicile is often difficult to find. I spoke to **SENATOR MESAROS** about this bill and about our position on it prior to this hearing and I know from our private conversation that he supports accelerated cadastral mapping throughout the State of Montana. I know that would help and I appreciate that **SENATOR MESAROS** is anxious to see us better identify who owns what property throughout the state.

I've been fortunate enough over the years to hunt in an area that has historically had information concerning land ownership. Each time that an updated map has come out, I've purchased it from Petroleum County, and I've colored it so that I can readily envision in my mind the ownership pattern in the area. This takes two maps; one map provided by the county and one map provided by the federal government. I color it using magic markers, laminate it and make it available to my friends. Over the years I have marked down brass caps, cabins, different residences so that I have in my mind's eye landmarks for where I am at all times and who owns that property.

I'm here to confess to all of you that I have made mistakes. I have found myself on pieces of property where I actually knew where I was but the property had changed hands. I go to all this trouble and I think legitimate hunters go to all this trouble so that we can ask permission. I do not want to find myself out in the field talking to a landowner who's angry at me. I can tell you that while I have gotten twisted around for a variety of reasons, the good people of Winnett have never seen fit to turn me in even though I was in violation of the laws cause I'm a big game hunter, not a bird hunter.

I can also tell you that I've been embarrassed with my kids who I've always taught to be ethical hunters. After I've spoken with a landowner who's let me know that while the previous owner allowed hunting, he didn't. Finding ourselves in a very uncomfortable personal circumstance even after making the best effort looms heavy in our minds.

As undoubtedly you can tell from all the folks in this room, this is a very emotional issue for sportsmen and women, just I think as any proposal to undermine the open range principle would be emotionally charged to anyone in the ranching community. Both of these kinds of public policy have their roots in the same basic western tradition that are important to all of us, from both a practical and symbolic perspective. It maybe that our old ways of doing things is doomed in the face of modern values and pressures. I hope not. If they are, I certainly hope that Montana among all the states in this region isn't the one to lead the way towards doing business more like folks elsewhere in the country do. I appreciate what **SENATOR MESAROS** is attempting to accomplish with this bill, but have to identify that Montana Wildlife Federation for the reasons outlined, urge that you do not pass **SB 171**.

Vince Fisher, Skyline Sportsmen, We absolutely advocate that the sportsmen ask permission. We absolutely respect the rights of landowners and I find myself frustrated as I oppose a bill I feel is sound. One flaw I do see is that up to a third of agriculture

land in Montana is public, either state or federal. Many of our sportsmen are interested in hunting those lands on which they have a right and have almost no way of identifying when they're off those lands and onto somebody's private land. When you experience that, you're exposed to fines or trespass. I also feel that there's a problem there with young people who indicate they are intimidated by trying to obtain permission.

Jim McDermid, Great Falls, passed out 2 pieces of testimony, own personal testimony, SEE **EXHIBIT(ags11a02)**, and Ron Litostansky, President, Russell County Sportsmen, SEE **EXHIBIT(ags11a03)**.

Jack Puckett, Big Sky Upland Bird Association, read testimony submitted. SEE **EXHIBIT(ags11a04)**.

Tony Schoonen, State Lands Coalition, was involved in both lawsuits concerning stream access and also recreational use of state land. There's approx. 5.3 million acres of state land in the state. There's hundreds of thousands of acres of state land that isn't marked, interspersed with private land. The DNRC now mark those lands that have special restrictions. Budgets for the BLM and Forest Service have been cut and they can't afford to mark their lands.

How can it improve landowner/sportsmen relations when youngsters, if they're on state land and they cross the line, even looking for the corner brass peg, are liable under the law. It's a felony, I think, six months in jail or a \$500 fine. How are you going to teach a kid in hunter safety to know what a transit is. This isn't going to improve what everyone says it's going to improve.

Bob Bugni, Prickly Pear Sportsmen Association is opposed to this bill for a number of reasons. Surrounding states don't think it's needed and they have larger populations than we do so certainly should have more problems. Fish, Wildlife and Parks said there's very few problems reported in the field. The reason permission is required for big game hunting is the safety problem with big game rifles. In bird hunting, the shot only goes forty or sixty yards where a high powered rifle can go two or three miles.

The development of the orange paint made it very easy for landowners to post their land without putting their name on the land. It led to other problems with people posting land they didn't own. With unfenced land, unposted land, and checkerboard patterns it's very easy to get yourself in a situation where you're facing criminal trespassing law.

Bill Holdorf, PLAAI Public Land Access Association, is also opposed to the bill. What you're doing is setting a bear trap for recreationists when it comes to crossing unmarked public land. I would like to see color coded markings on the land.

I've had permission for years to hunt ducks at Sheep Creek south of Dillon. A neurosurgeon from California bought all the property, a big portion of what was Bureau of Land Management. When they tried to run me out of there we had a terrible hassle. It ended up in the courthouse with the county attorney in Dillon. We didn't go to court but it was settled. That's how far that thing went. Now they have signs put right through that property. There hasn't been anyone else in trouble if they've stayed on the public just because there's markings.. There's a section of land along the Beaverhead River that is private on both sides, but there's a mile or so that belongs to the state Fish & Game Commission. Both sides of the public land are marked and the part that is open to the public, Fish & Game, is also marked. I've hunted there and haven't had any problem but I'm sure if I crossed the fence I could get in trouble. As long as you people have your land, I'd sure like to have you respect us by marking it.

Bob Lucas, Big Sky Upland Bird Association, read written testimony. SEE EXHIBIT(ags11a05).

Lawrence Sickerson, State employee testifying on his own time, read written testimony. SEE EXHIBIT(ags11a06).

L. F. Thomas, Anaconda Sportsmen are opposed to this bill. Two people came across country. At the border of Montana the Crows put up no trespassing and didn't sign it. What do you think Lewis & Clark would have thought.

Charlie McCarthy, in opposition to **SB 171**, I'm concerned that this bill will shut off more land. That is because some landowners are sick and tired of giving permission, sick and tired of answering the phone. "I'm sick and tired of having you guys ask, everyone knows you can hunt antelope here." How much more so are they going to be when the bird hunters start calling. I've had permission from a landowner for years and so have others to park their trailers on his place. It was posted by the BLM saying you can't be on here for more than 14 days. I went down there and found out he didn't own that land. I told him about it and he said he's been kind of wondering too. So it gets a little bit more complex.

SENATOR MESAROS made the point that the orange paint fades. Why put the onus on the sportsman if the landowner himself can't keep the land posted. Why will it fall on us with criminal trespass if we can't find the land.

{Tape : 1; Side : B; Approx. Time : 4.28}

Bill Orsello, Third generation Montana Sportsman, philosophically agrees with **SENATOR MESAROS**. But it's not a simple bill and doesn't address the ramifications. I hunt pheasants extensively in the Choteau area. A great deal of it has gone into Conservation Reserve Program. **(Tape Change)** I've never intentionally hunted on ground I didn't have permission for. I have been inadvertently caught in between landowners who didn't agree on their boundary lines. I've gotten permission from landowners and the lessee had a different opinion. Without any kind of posting, it's very difficult when you're walking across 1,000 to 2,000 acres of CRP ground, to delineate when and if you've on the correct property. Sometimes the directions you get are less than accurate.

SENATOR BECK made a very good comment in that good fences make good neighbors. This same holds through on the other side of the fence, There is some responsibility for landowners to make their property and boundary lines definable for sportsmen in the field.

Stan Fraser, Permission should be gained to enter on private property. Any landowner certainly has a right to control who is on his property. But you also have the responsibility to mark where that property is and I can assure you this bill is not going to improve relations between landowners and sportsmen.

Dave Van Tiegen has always allowed hunting on his property. His land borders a lot of BLM land and there's also private property that borders on two sides. What is bad with this bill is it would make a criminal out of an innocent person who mistakenly crossed over the property line to property of a person who feels differently than I do. If the present law is not broken, why correct it.

{Tape : 2; Side : A; Approx. Time : 4.33}

SENATOR DEVLIN asked all opponents how many go out ahead of time and do a little scouting and asking ahead of time where you're going to hunt? That's pretty good. We wouldn't need this bill if that were the case throughout Montana. I have another question for Mr. Jamison. Several mentioned that they have a terrible time finding the house. How are you going to find the birds if you can't find the house.

Van Jamison answered sometimes these birds fly across the public highway. You know where they are, but you need to find out whose ground it is. There's general agreement on how people should behave towards one another. The crux of the issue here is whether or not hunters should be required at the penalty of law to obtain permission.

SENATOR DEVLIN could you tell me how many cases were people prosecuted in the last couple years for trespass.

Van Jameson could only answer when he's become twisted around and trespassed, people have been real kind. He's never been prosecuted and can't tell of anyone who has. He thinks that says more about whether we even need the law. If nobody is going to enforce it we are still back to the gentlemen's agreement.

SENATOR DEVLIN asked if in most cases, someone who is trespassing and has not asked permission is just asked to leave.

Van Jameson answered yes.

SENATOR BECK commented he's never had a problem with anyone who asked to hunt on his land. That's a compliment to the sportsmen of Montana. Where he's had problems is with the guy who didn't come and ask. He's the one who left the gate open, the one shooting the gophers amongst the cows.

There was an incident where a man went up to a guy on his property and said hey, what are you doing on this property. The guy said I'm hunting gophers. The owner said he had livestock on this property and I wish you wouldn't hunt here. The guy said you have no choice, I've got the right to hunt here. That's what's bringing these bill.

I'm trying to say I understand your plight on identifying the land. Fish, Wildlife and Parks has lots of money in its budget. He doesn't know why a map couldn't be put out that identifies state lands, federal lands, private lands and private owners. Land ownership can switch, but the bulk of that land will have the registered owner. That gives the sportsman opportunity to ask for permission.

I sometimes get irritated with the hassle of being asked. It will be at 4:00 a.m., they're trying to get to the top of the mountain before I'm even up getting ready to work. I'm starting to get a little irritated, I may say no, get off the place. Why couldn't you come during the daylight hours. It works both ways, each side has some responsibilities. He doesn't want to see this conflict coming in here and thinks could work with this

bill and with FWP to get identification of land. It's the out-of-state landowners that are coming in and we're starting to see some problems regarding permission.

CHAIRMAN JABS Most hunters realize they need permission and if they're asked to leave, they will leave.

Van Jameson can only tell that's his reaction. Most hunters would not be belligerent and would leave the property.

CHAIRMAN JABS Legally, they go there without permission but if they're asked to leave, they have to go. Is that right?

Van Jameson I won't trivialize the bad experiences landowners might have had with people who get belligerent.

CHAIRMAN JABS commented the frustrating thing for a legislator is we make laws to control a few people and it affects everyone else. That's the frustrating thing about this whole process.

{Tape : 2; Side : A; Approx. Time : (4:43)}

Closing by Sponsor:

SENATOR MESAROS thanked everyone who testified on both sides. Let's not lose sight of the fact that it's just private land we're talking about that many conscientious farmers and ranchers are struggling with today. On issues like this emotions are high. Our challenge is to separate the emotion and address the fact. This is not a trespass bill. This simply amends one section of fish and game code that all other big game hunters have been complying with for years. This is something that's worked for years. All we're asking is to include other hunters in the same requirement.

Orange paint does not identify the ownership of the land. That affects the trespass statute, issue. It was said that violation this would be a criminal trespass and a felony. Violation of this statute is a misdemeanor.

Safety surrounding the use of a shotgun is reduced from that of a rifle. There are other hunting activities that include coyote hunters, gopher hunters, woodchuck hunters, on and on, that use the same caliber rifle that's used in big game hunting. The safety risk is still there but yet they're not required to ask permission.

It's been requested that it's the landowner responsibility to mark boundaries. Yet state lands in the field are not marked.

Hunting districts aren't marked in the field, counties aren't marked other than on a public right of way. It is difficult to mark land in the field with a consistent marking system. That's evidenced by the lack of it.

I believe most of the testimony was concerning boundary identification. I will be the first one to lead in improving landowner identification, be it through cadastral mapping or some other responsible means of demonstrating the land ownership patterns thru the state.

Let's make sure we don't confuse the issues. One is boundary identification and another is just simply asking permission. It is a tool that's been used for years for big game hunting and all of a sudden I hear it will not work. It's been working. We should concentrate on the real problem of boundary identification through improved maps that can be approached thru organizations such as the sportsmen organizations, agriculture organizations. Fish, Wildlife and Parks. could take the lead and coordinate this effort.

I did sponsor a similar bill two years ago. It met similar reception. That was a trespass bill and I modified the trespass statutes. This bill does not have anything to do with modifying the trespass statutes or get rid of orange paint. With my commitment to work with the hunting community, I offered, along with others, to see through the consensus process to try to bring some reasonable responsible resolution to this volatile situation. The Consensus Council has been very successful in many issues but it was not in this case.

There are certainly problems in the field or else this bill would not be here today. I believe most of the resolution is met with conflict in the field that nobody enjoys, landowners or sportsmen. Simply stated, since big game hunters readily identify land owners, I think it's not as big a problem as what is portrayed. If you have a one on one visit with the landowner, a map can be given and a lot of the problems that have been identified can be readily addressed right there. I certainly forward to enhance the relationship, certainly not an attempt to drive a wedge between any landowners or sportsmen groups. I represent many of each. This is a lingering problem and I believe this is one step to address it.

ADJOURNMENT

Adjournment: 4:49 P.M.

SEN. REINY JABS, Chairman

CAROL MASOLO, Secretary

RJ/CM

EXHIBIT (ags11aad)